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"An Examination of Federal Permitting Processes"

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Chairman Farenthold, Ranking Member Plaskett, members of the subcommittee, on behalf of the more than 140,000 members of the National Association of Home Builders, I appreciate the opportunity to testify today. My name is Valerie Wilkinson, and I am a Vice President and the Chief Financial Officer of The ESG Companies. The ESG Companies is a group of family owned development, building, management and entrepreneurial companies based in Virginia Beach, Virginia. Our companies evolved from a small electrical contracting company started by our founder, Edward Garcia, after returning from serving in the Navy in the Pacific during World War II, and we have been providing strong, sustainable communities ever since.

I commend the subcommittee's desire to highlight the pitfalls of the current regulatory regime, and I appreciate the opportunity to tell our story. Our quest to obtain a federal wetland permit for our building project has spanned nearly 30 years. Throughout every step of the process, the rules have changed and new requirements have been added. Unfortunately, the land we acquired almost three decades ago still lays undeveloped and we continue to be held hostage by the federal government. After spending thirty years and over $4.5 million dollars in pursuit of the required permit, we still are not even close to obtaining a federal 404 CWA permit for our project.

Recognizing and supporting the need for a clean environment and the benefits that it brings to our nation's communities, home builders and land developers have a vested interest in preserving and protecting our nation's water resources. Since its inception in 1972, the Clean Water Act (CWA) has helped to make significant strides in improving the quality of our water resources and improving the quality of our lives. Our nation's home builders build neighborhoods, create jobs, strengthen economic growth, and help create thriving communities while maintaining, protecting, and enhancing our natural resources, including our lakes, rivers, ponds, and streams. We foster the American dream of home ownership. Under the CWA, home builders must often obtain and comply with section 402 storm water and 404 wetland permits to complete their projects. What is most important to these compliance efforts is a regulatory scheme and permitting process that is consistent, predictable, timely, and focused on protecting true aquatic resources.

The home building community knows all too well the frustration of a broken permitting process. Over the years, the federal government has expanded the scope of their regulatory authority and have frequently changed the requirements needed to obtain a federal wetland permit. These changes have made the permitting process virtually impossible to navigate and have caused many land use projects to come to a grinding halt, putting more people on the unemployment rolls. It is impossible for home builders and developers to support the needs of our community under an ever-changing regulatory system. With property rights being jeopardized by federal regulatory overreach, it is increasingly difficult to attract new companies into our industry. Unfortunately, our company has fallen victim to this broken system.

Our story begins in the mid-1980's when The ESG Companies began to acquire parcels of land in order to develop a mixed-use community in Chesapeake, Virginia. Our mission was to address the anticipated population growth and housing demand after forecasters announced that 8,000 new jobs would be created in the Chesapeake area. The proposed project consisted of a multi-use community comprising retail, office, multifamily, single family and town homes with recreational amenities. Multiple parcels of land were consolidated into the Centerville Properties, a 428-acre development with a total investment in the project today, including land and carrying costs, of over $40 million.

In 1989, after obtaining required zoning approvals from the City of Chesapeake, The ESG Companies began clearing the land to develop Centerville Properties. Almost immediately, the U.S. Army Corps of Engineers (the Corps) asserted that jurisdictional wetlands, which were subject to CWA protections, appeared to be present on the property. They issued a Cease and Desist Order to halt "any and all filling activities on or adjacent to the waters and wetlands located on the property" until a wetland delineation could be completed. This action was surprising because prior to this time, we, along with many builders like us, had been developing properties like this all over the region, and the Corps had never asserted jurisdiction over similarly situated seasonally wet, non-tidal forested land. Even while the Corps put us through this rigorous regulatory obstacle course, numerous properties in the vicinity with similar soils, hydrology and vegetation characteristics had been and continued to be developed without permits.

The Corps asserted jurisdiction over our property by using their newly expanded jurisdictional authority to regulate wetlands as "waters of the United States." The landmark Supreme Court decision, *United States v. Riverside Bayview Homes, Inc,*[1] solidified the Corps' authority to regulate wetlands adjacent to navigable waters. The Court decided that wetlands which "actually abut on a navigable waterway" are "adjacent" and subject to CWA authority.[2] While our property does not directly "abut" a navigable water and is connected only by a historical, non-navigable drainage ditch, the Corps claimed that there was a subterranean connection to a jurisdictional water due to the fact that our soil was seasonally saturated to the surface.

[1] 474 U.S. 121 (1985).
[2] *Riverside Bayview*, 474 U.S. at 135.

While we did not agree with the decision that we were subject to federal jurisdiction, we clearly understood that the rules had dramatically changed. Therefore, we immediately hired highly qualified and esteemed environmental consultants, Dr. Hilburn Hillstead, a biologist and environmental scientist with Law Environmental and a former official with U.S. Fish and Wildlife Service (USFWS), and Dr. Wayne Skaggs, a soil scientist and then professor at the University of North Carolina and member of the Soils Committee of the National Academy of Sciences to assist us with the wetland delineation and permitting process. From 1990 to 1995, our consultants attempted to work with local Corps officials to resolve any issues and clear a path that would allow our project to break ground. Surprisingly, Corps staff steadfastly refused to consider hydrology studies performed by Dr. Skaggs showing that the soil on site was not saturated to the surface by capillary fringe due to free standing water 12" below the surface. The Corps responded that it did not dispute Dr. Skaggs' findings, however its definition of surface is the "A" horizon within the root zone 12" below the top of the soil. Regrettably, the delineation took years to complete because at the time there was considerable confusion among Corps staff as to whether they should use the 1987 or the 1989 wetland delineation manual to determine the existence of wetlands. Even though the 1989 delineation manual had been expressly disallowed by Congress in the Fiscal Year 1993 Appropriations bill,[3] Corps field officials still used it to complete their field assessments on our project.

Prior to 1998, mechanized land clearing and excavating in wetlands to prepare the land for development was prohibited by a Corps rule. However, the D.C. Circuit Court of Appeals overturned the rule prohibiting these actions in 1998.[4] In July 1999, after the Court ruling, Tri City Properties, LLC (Tri City), one of The ESG Companies, obtained an erosion and sediment control and water discharge permit and moved forward with clearing and excavating the land under the supervision of lawyer and environmental specialist, William Ellis.

As it has always been our intention to be in full compliance with federal regulation, we notified the Environmental Protection Agency (EPA) and Corps prior to initiating the action and took videotapes of the work as it was undertaken. These video tapes were then provided to the EPA. The ditching was accomplished by excavating and loading the material directly onto trucks and hauling it to an offsite location under the supervision of an engineer. At no point was dredged or fill material re-deposited on the land. Yet, in May 2000, the EPA issued an Administrative Order for compliance, one of over 20 they issued that day in our general area, stating that illegal discharges, "if any," must cease immediately and a new wetland delineation must be completed. No illegal activity took place on our property. However, later that year the Commonwealth of Virginia adopted a new regulation that required a permit to excavate in wetlands. Therefore, to comply with this new state regulation, we filed an application with the Virginia Department of Environmental Quality (VADEQ) to continue excavating the land. In addition, we retained the services of Environmental Specialty Group headed by Julie Steele, a former Corps Norfolk District regulatory branch Section Chief as well as Dr. W. Thomas Straw, a hydrogeologist and currently Professor Emeritus of Geosciences at Indiana University. These specialists have

[3] Energy and Water Development Appropriation Act of 1993, P.L. 102-377, 106 Stat. 1315, 1992
[4] *National Mining Association v. U.S. Army Corps of Engineers*, 145 F.3d 1399 (D.C. Cir. 1998).

extensive expertise in environmental geology and wetlands hydrology and worked to develop a new wetland delineation as requested by EPA through their Administrative Order for compliance.

After obtaining yet another wetland delineation and 15 years since we had first started readying the property for development, we were prepared to apply for our wetland permit. VADEQ and the Corps have joint permitting authority over the Commonwealth's wetlands. The expressed purpose of Virginia's statutory scheme was to provide a one-stop shop and prevent land owners from having to go through duplicative permit approvals. It is important to note that Virginia's wetlands regulations mirror the CWA section 404(b)(1) requirements. Since they use the same criteria and methodology, the state and the federal government should not differ in their regulatory assessments of our project. Unfortunately, coordination was not what we experienced, and our project only illustrates the disconnect between state and federal permitting partners.

In late 2000, we sent our new wetland delineation to the VADEQ to begin the permitting process. Our environmental consultant certified that the site contained 253.5 acres of palustrine, forested wetlands and 174.7 acres of upland. The VADEQ made multiple requests over an 8-month period that the Corps confirm the delineation; however, the Corps refused to participate, citing the outstanding Administrative Order. Therefore, Dr. Ellen Gilinsky, then VADEQ's Director of the Water Quality Programs Division who later served as a Senior Advisor to the EPA's Office of Water, and her colleague, Dave Davis, personally confirmed the wetland delineation we provided by performing their own field assessment of the property. Dr. Gilinsky and Mr. Davis invited Corps officials to accompany them on their field review so Corps staff could observe the wetland boundaries on the property. Corps staff attended but left without comment. The VADEQ confirmed the wetland delineation, showing 174.7 acres of uplands and 144.6 acres of wetland impacts, and the state permit process moved forward.

In late 2001, in an effort to find a mutually beneficial and expedient resolution to the outstanding Administrative Order, representatives from Tri City and their legal counsel, Robert Dreher, who now serves as the Associate Director of USFWS, met at EPA's Philadelphia offices with key EPA officials as well as a representative from the Environmental Defense Section of the U.S. Department of Justice (DOJ). Tri City proposed a settlement through a Consent Decree which included significant mitigation and preservation that the DOJ official believed it was in everyone's best interest, and EPA representatives agreed, with the caveat that they would need concurrence from the Corps to finalize the agreement. We were later notified that the Corps did not concur and would require a CWA 404 permit for any development to proceed.

As required by Virginia state law, VADEQ opened a notice and comment period and held two public hearings on our project. During this time, we continued to communicate with VADEQ and interested parties to respond to any and all concerns regarding the impact of the project. In an effort to move the project ahead, we agreed to make a number of significant changes to our development plans to lessen the number of wetlands impacted. The revised project allowed us to avoid over 100 acres of wetlands and required us to offset our impacts by creating 290 acres of wetlands offsite by restoring wetland function on prior converted cropland. This amounts to two acres of restored wetlands for every one acre impacted. We also agreed to contribute 145 acres of

wetlands on the adjoining property as a conservation buffer. As a result of these new development, mitigation and preservation plans, VADEQ concluded that the project met the requirements of **no net loss** of wetland acreage and functions. In addition, Tri City agreed to install state-of-the-art stormwater ponds and filtration features such as wetlands benches, bioretention areas, and grassy swales in order to reduce erosion and improve water quality. At our final public hearing, VADEQ acknowledged that the permit contemplated more protective measures than typically required. Once again, VADEQ attempted to share our new project plans with the Corps, only to be rebuffed. At this point it had become painstakingly clear that the Corps did not want to participate in any review of our project.

On November 21, 2003, almost twenty years after obtaining the property, the Virginia State Water Control Board approved and VADEQ issued a Virginia Water Protection Permit, allowing Tri City to impact 144.6 acres of wetlands. The permit, which expires in 2018, included the negotiated wetland conservation requirements as well as numerous other conditions relating to wildlife preservation, erosion and sediment controls and construction procedures. Shortly after the issuance of the permit, VADEQ Director Bob Burnley praised our project, in an official VADEQ publication, as "an excellent example of the success of Virginia's wetland protection program" due to the extensive restoration, preservations and minimization requirements. Our project was being used as the prime example of how development can occur with sound environmental protections.

On two occasions, the Virginia judicial system defended our State permit against legal challenges. The Chesapeake Bay Foundation (CFB) opposed the issuance of the permit in *Chesapeake Bay Foundation v. Commonwealth of Virginia*. The Circuit Court of the City of Richmond ruled in our favor by upholding the permit.[5] The CBF appealed the decision only to lose again when the Virginia Court of Appeals issued a final ruling upholding the validity of the permit on April, 22, 2014.[6] Our state permit still remains in full force and effect, but only for another 9 months.

While we still needed formal CWA section 404 approval from the Corps, we felt we had overcome the most challenging obstacle of securing the wetland permit from the Commonwealth. After all, Virginia and the Corps have joint permitting authority, and the Virginia regulations enacted the CWA 404 regulations verbatim. The Corps issued the first public notice on the property based on the VADEQ confirmed impacts in 2005, and Tri City provided responses to all public comments including those made by the EPA, the U.S. Fish and Wildlife Service and the cities of Virginia Beach and Chesapeake, as well as various environmental groups and individual citizens. The Corps then requested a significant volume of new and updated information which we also provided; however, it took approximately 1 year to receive a response from the Corps related to our submissions.

The Corps subsequently concluded that the VADEQ-approved wetland delineation, which was the basis of our approved state permit, was not accurate. This is the same wetland delineation

[5] Chesapeake Bay Found., Inc. v. Com., ex rel. Virginia State Water Control Bd., No. 1897-12-2, 2014 WL 1593323, at *4 (Va. Ct. App. Apr. 22, 2014).
[6] Id. at *16.

that the VADEQ asked the Corps to confirm three years earlier. With disregard to the VADEQ's regulators and their expertise, the Corps performed a new wetland delineation in 2007 that added 36.7 acres of wetlands to the project for a new total of 181.3 acres impacted. Contrary to the well-documented delineation that was performed by our environmental consultants and VADEQ, the basis of the Corps delineation is rather vague and, in some instances, a stretch. For example, the Corps relied on a single observation of "ponding water and blackened leaves in designated areas" as primary indicators of hydrology during their site visit. Due to the increase in wetlands impact per their confirmation, the Corps required that the project go through a second public notice process. Tri City again provided detailed responses addressing all public comments.

In response to the Corps' delineation, we quickly worked to amend our project proposal and offered a number of options to further reduce our environmental impact. One of the proposals we offered reduced wetland impacts from 181 acres to 80 acres with onsite 1:1 mitigation. We also worked through the Corps' Least Environmentally Damaging Practicable Alternatives (LEDPA) analysis and considered the Corps' impractical suggestion that we move our project to 90 acres of uplands on nearby Elbow Road. However, there were many complications with the Corps' LEDPA. First, the 90 acres is located along a narrow winding and dangerous section of road that could not support the main ingress and egress of a mixed-use development without millions of dollars of offsite infrastructure and road improvements that would have made the project financially infeasible. Second, the City of Chesapeake zoning laws prohibited us from moving the project to that area. In an attempt to overcome this obstacle, the Corps unsuccessfully tried to pressure city officials to waive current zoning restrictions and related proffers to allow the result it desired. Finally, as it is Congress' policy to "recognize, preserve and protect" the rights of the states to "plan the development and use…of land," the Corps has no authority to determine where a project should be built,[7] yet the Corps requires such "off-site alternatives" be considered even when not owned by the applicant. This action is an unfortunate example of the federal government's intrusion on local land use.

Three years after our permit request was filed with the Corps and 8 years after we had initiated the joint permitting process with the VADEQ, the Corps denied our request for a federal wetland permit. The Corps believed that we had failed to prove that the 90 acres of uplands on Elbow Road could not be developed and stated that we had not met the requirements of the LEDPA. The Corps also claimed that we did not adequately respond to requests for information even though we had filed all requested information, including analysis of numerous offsite alternatives, extensive analysis of 17 onsite alternatives and detailed responses to two rounds of public comments.

In an effort to avoid litigation challenging the denied permit and to salvage at least part of our investment, we modified our project yet again. The significantly reduced plan allowed development on just 61 acres, impacting 29.8 acres of wetlands. In 2009, the Corps accepted this proposal as a modification of the previously denied permit and reopened the 2005 application.

[7] 33 U.S.C. § 1251(b).

The Corps issued their third public notice on our project with its modified scope and impact and Tri City again provided responses addressing all public comments.

As soon as we started to gain ground, the Corps issued a new regional supplement manual for field staff to use in making wetland delineations.[8] Contrary to claims made by the Corps at the time of release, these changes significantly expand the definition of wetlands and subsequently increased limits of wetlands into land that was formerly delineated by the Corps as uplands. This change specifically affected the Tri City property at Centerville. Two of the secondary indicators of hydrology were changed to primary indicators and used to expand the test for identifying wetlands. This change alone shifted very large areas from uplands to wetlands. We do not understand how the U.S. Army Corps of Engineers can adopt a 148- page "supplement" in 2010 to the 100- page 1987 Corps Wetland Manual, when Congress instructed the U.S. Army Corps of Engineers in 1993 to not utilize Department of Defense moneys to use any wetland manual other than the 1987 Wetland Manual. The use of the word "supplement" by the Corps appears to have provided an end-around of Congress.

The rules changed again in the midst of the process and the Corps applied these wetland manual changes to our pending project application. In essence, we were forced to start over with new rules. We were now required to go through a public notice for a fourth time based on the increased impacts, moving us even farther away from securing our permit. In fact, more than 60 days since the publication of our last notice, we received another 7-page request from the Corps for new and updated information on our project. It appears that we will be perpetually subject to vacillating circumstances.

Over the last ten years since the original permit denial, we have diligently continued to work with the Corps in an attempt to obtain a federal wetland permit. For us, these years have been spent responding to the Corps' constant requests for additional information, studies, and data. When we responded with the requested information and data, we were often met with follow-up requests to reformat the information in a painstakingly specific way. Indeed, the numerous reformatting requests appeared to be nothing other than an intentional stalling mechanism, as we swiftly complied with every request only to be faced with another. We had to hire additional environmental consultants to conduct more wetland delineations and wetland functional assessments, and even hired consultants suggested by the Corps. In addition, the Corps staff assigned to our project continually changed over the years and we struggled to keep them appropriately educated on our project. Over the years we have had dozens of field visits from Corps and EPA staff in order to survey and assess the land. We have complied every step of the way.

Since 1988, the Corps has successfully prevented Tri City from developing the land, the 15-year permit that VADEQ approved in 2003 will soon expire. The results of our 28-year effort to obtain required permits for the development of our property are contained in approximately 55 file boxes of records of submissions, correspondence, maps, scientific analysis and data

[8] "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0)." U.S. Army Corps of Engineers. November 2010.

collection related to this project and our pursuit of the required permits. In fact, if we laid the papers end to end, they would stretch over 30 miles, the distance from the U.S. Capitol to Dulles airport. It is hard to keep going when the continual requests and delays seem designed to further protract the process and frustrate our ability to ever reach a resolution and run out the clock on our state permit.

In 2015, the rules changed again when the EPA and Corps finalized a regulation to redefine the scope of waters protected under the CWA. The agencies added new terms, definitions, and interpretations of federal authority over private property that are more subjective and provided the agencies with greater discretionary latitude to expand their regulatory authority.

This rule fell well short of providing the clarity and certainty sought by the regulated community. It would increase federal regulatory power over private property and would lead to increased litigation, permit requirements, and lengthy delays for any business trying to comply. It is so convoluted that even professional wetland consultants with decades of experience would struggle to determine what is jurisdictional. The federal government should be working to provide a practicable and transparent permitting system rather than expanding their authority over private property.

Fortunately, the Trump Administration is working to rescind this rule. We are optimistic that the Administration will develop a new rule that respects congressional intent under the CWA while protecting the aquatic environment and improving the compliance process for the regulated community.

Recommendations for Streamlining Permitting

NAHB members were encouraged by President Trump's recent proposal to strengthen our nation's transportation and infrastructure. There are many aspects of this proposal that help establish a permitting regime that is consistent, timely and will prevent agencies from needlessly delaying projects.

We are supportive of the Administration's proposal that requires one agency to take the lead on evaluating projects. Many federal statues tie their approval/consultation requirements to those of the CWA – meaning that if a builder has to obtain a CWA permit, they must also obtain others, such as under the Endangered Species Act, National Historic Preservation Act, and National Environmental Policy Act. This means that builders not only have to consult with the Corps and EPA, but also with the Fish and Wildlife Service. And during these additional reviews, the developer does not have a seat at the table, and the consulting agencies are not bound by a specific time limit. This immediately places builders and developers at a disadvantage. These federal consultations, across multiple agencies, are just another layer of red tape that the federal government has placed on small businesses. Allowing builders to consult with one agency will ultimately reduce the time and resources needed to obtain a permit, while continuing to protect the environment.

The Administration's proposal offers the certainty the regulated community desires by giving the federal government a two year deadline to complete the permitting process. I cannot overstate how valuable this aspect of the proposal would be for my business. Having that certainty would allow us to predictably bring our product to market which not only benefits the home builder but also the home buyer.

In addition, we were pleased to see that the Administration's proposal included language that would reverse the Civiletti memorandum ("Civiletti Memo"). The Civiletti Memo, named for its author U.S. Attorney General Benjamin Civiletti, gives the EPA the final word on CWA 404 permits. The Civiletti Memo makes little sense given the Corps' expertise in administering the day-to-day operation of the 404 program. The Corps has decades of experience operating the 404 program and has conducted hundreds of thousands – perhaps millions – of CWA jurisdictional determinations and issued countless 404 permits over the years. EPA does not have this experience and does not make jurisdictional determinations nor issue section 404 permits. Yet, the Civiletti Memo allows EPA to delay, block, or second-guess the Corps' expertise in managing the 404 program. To address this, the Civiletti Memo should be rescinded and the government must confirm that the Corps has ultimate administrative authority to operate the 404 program, issue permits, and make jurisdictional determinations under the CWA.

While the Corps, not the EPA, should have authority over federal permitting, they must stop acting as a roadblock to states and tribes that wish to administer the CWA 404 permitting program for certain waters within their borders. Section 404(g) of the CWA authorizes states to assume authority to administer the 404 "dredge and fill" program in some but not all navigable waters and adjacent wetlands. Section 404(g)(1) describes the waters over which the Corps must retain administrative authority even after program assumption by a state. Only two states, Michigan and New Jersey, have been approved to assume the Section 404 program. While other states have explored assumption, those efforts have not borne fruit in part due to uncertainty over the scope of assumable waters and wetlands. Unfortunately, the Corps has sought to retain far too many waters under federal authority thereby contradicting the intent of Congress under 404(g). The Corps' overly expansive interpretation of waters and wetlands to be retained under Corps' authority leaves little, if any, waters for states to assume 404 permitting authority over. In giving authority to the states as envisioned by Congress, red tape in Washington will be cut and permit costs and delays for home building projects and related infrastructure projects will decrease.

In addition, the Corps must stop expanding CWA jurisdiction using supplements to the 1987 wetland delineation manual. To identify and delineate wetlands, the Corps published the "1987 Corps of Engineers Wetlands Delineation Manual" (the 1987 Manual). The 1987 Manual describes technical guidelines and methods to determine whether an area is a wetland for purposes of CWA Section 404 and subject to federal permitting. Over time, the Corps has made a practice of "supplementing" the national 1987 Manual with regional variations. These "regional supplements" relax the three-parameter test needed to determine that an area is a jurisdictional wetland, allowing regulators to reject scientific studies conducted by highly credentialed professionals, and arbitrarily make findings of wetland hydrology based on a single

observation of field indicators, such as ponding water on the ground surface or blackened leaves. Such use of unsupported field indicators expand the Corps' regulatory authority unlawfully. As more and more features, such as common woodlands and farm fields, become jurisdictional wetlands, more home building projects will face increased costs and delays. To avoid this undesirable outcome, the Corps must eliminate the regional supplements and assert jurisdiction only in instances where wetland plants, soils, and hydrology are actually present and clearly definable in the field by the Corps and private consultants.

Finally, Corps headquarters should assert centralized control and oversight over its regulatory program. Unfortunately, due in part to the absence of strong oversight and central guidance from Corps Headquarters on important regulatory interpretations, there has been inconsistency among Corps districts as they implement the CWA Section 404 program. These inconsistencies create uncertainty for both regulators and project proponents and make it difficult for Corps staff to administer the program. The results are increased project delays and costs. To reduce regulatory confusion stemming from district-by-district interpretations of regulations and guidance, Corps headquarters must establish clear lines of authority to direct the implementation of key regulations and policies. Until Corps headquarters makes this fundamental change, there will continue to be inconsistency, uncertainty, and delay associated with the CWA Section 404 permitting process.

Conclusion

After more than three decades of stalls, delays and changing federal requirements, our most recent project proposal totals 53.8 acres, a 233-acre reduction from the original development proposal. If constructed, the project will benefit the City and the public in the form of increased employment opportunities, increased property tax revenue estimated at well over $1.1 million per year, sales and use tax revenues, proffers for a school site, and increased public amenities.

For over thirty years we have complied with every request, modified our building plans, and created an extremely aggressive conservation plan to combat environmental impacts. It is difficult to say what else we can do to move this project forward. Most recently, at the request of the Corps and the EPA, we have conducted another extensive review of the feasibility of developing the 90 acres of uplands near Elbow Road; however, this again has been deemed infeasible as it would require rezoning which the City has recently denied to a similarly situated parcel, 2,000 feet south of our property. Most businesses do not have the time, money and fortitude to engage in these lengthy fights and are forced to abandon such projects. We believe this is the Corps main objective. We are fortunate to have the means to stay in this fight, and our Chairman, Edward Garcia, now 92, is dismayed that the very liberties and fairness that he and his three brothers fought for during WWII are now being eroded by an overzealous regulatory bureaucracy. Eddie is not about to step away from this fight because he understands how important it is not only for our project but also for all landowners. While the project remains at a standstill and we still have no clear end in sight, I hope that our story can be used to advance positive reforms to repair our broken regulatory system.

I encourage you to pass legislation that would implement some of these commonsense changes. I am hopeful that in the coming weeks, you will seriously consider a legislative proposal that will establish a permitting process that offers transparency, certainty and reasonable deadlines. This will go a long way towards improving the way we do business and making the homes we build more affordable.